Draft Minutes

Division of Occupational Safety and Health
Cal/OSHA Noise Advisory Meeting 5/28/03

Jay Bosley, Operating Engineers Local 3
Julianne Broyles, Chamber of Commerce
Michael Cevola, Department of Corrections
Tad Coatsworth, Sheet Metal Workers
Scotty DuPriest, John F. Otto, Inc. & AGC Member
Charles Fankhauser, Petitioner, Medical Electronics Designs & Instruments
Judy Freyman, Organization Resources Counselors, Inc.
Anne Katten, California Rural Legal Assistance
Steve Johnson, Bay Area Roofing Contractors
Merlyn Lubiens, Center for Hearing Health
Cyndi Marshall, Sheet Metal & Air Conditioning Contractors Nat. Assn.
Marshall Massie, Operating Engineers Local 3
Mary McDaniel, Center for Hearing Health
Paul Michalko, State Compensation Insurance Fund
David Milano, HVAC Contractor/ Bay Area SMACNA
Michael Prosio, California Restaurant Association
Virginia Siegel, On-site Health and Safety
Scott Strawbridge, Northern CA Mechanical Contractors Association
Chris Walker, Sheet Metal & Air Conditioning Contractors Nat. Assn
Ed Yates, California League of Food Processors
Tom Mitchell, Occupational Safety and Health Standards Board
Steve Smith, Division of Occupational Safety and Health
Robert Nakamura, Division of Occupational Safety and Health

Mr. Nakamura opened the meeting and thanked attendees for coming. He informed them that the Division did not have additional staff present to take notes for the minutes. Instead, the meeting would be recorded, and the voice recording would be used to write the minutes. He then asked the attendees to make self-introductions of name and affiliation.
The minutes from the last meeting were reviewed. One mistake was noted regarding Virginia Siegel's title. Mr. Nakamura had sent a correction notice but it may not have reached everyone.

Petition 428: adoption of 1999 ANSI standards for audiometric testing facilities

Synopsis: after the January meeting, the proposal was to adopt most of the proposed ANSI 1999 background levels and the option of conducting the tests with insert earphones with somewhat less stringent background levels. Mary McDaniel had done field measurements of various testing sites and reported that none of the existing facilities that she tested could meet the lower frequencies (125-500Hz), and was told by other service providers in Washington state that they could not meet the levels either, especially in the case of mobile vans. She and Dr. Fankhauser debated the need and benefit that adopting the proposal would provide in California, without reaching agreement. They agreed to discuss possible compromises as a subcommittee and report to the whole group at the next meeting.

Mr. Nakamura started the agenda items with the petition to amend Appendix C requirements for the background noise levels for testing environments.

Ms. McDaniel wanted to make two points for clarity. Her measurements were done with a type 2 sound level meter that has an accuracy of +/- 1 dB. The minutes suggested that she tested in one site only, but she had tested neighborhood clinics, in-plant booths and 3 different vans. Booths had 2 or 4-inch thick walls. There were 10 different facilities altogether. Three major points came of it. None of them met the proposed 99 ANSI standards at 500 Hz. None of the booths attenuated at 125, and attenuation was minimal at 250. Even the booths currently on the market do not meet the new standard but can meet 1000 and above. The only type of facility that could meet ANSI levels would be the clinical facilities.
She has worked on these issues for a long time. She agrees that the current levels may be a little excessive, but the proposals are over the top. The hearing loss programs are designed to measure the change over time. The critical concern is to assure that the environment is consistent, then the results are consistent also. They are forced to test in less than ideal environments, but still can get good results that show a STS. The change would be an unnecessary burden on business with significant costs. It was suggested that the employer could move a van, get another van or get another testing service, and this shows lack of familiarity with the process. The benefit would not warrant the change. It would wipe out the existing van services. The proposed use of insert earphones suggested that their use would allow prevention of hearing loss, and that without the change, more hearing loss would occur. The reality with insert earphones is that there is already allowance for this. The proposal confuses OSHA and ANSI standards. The background levels and use of inserts are also two different ANSI standards. The current OSHA standard pertaining to testing is from the 1996 standard, and inserts had not been prevalent. So OSHA allows for insert earphones now, but it is a deminimis violation (one without penalty) of OSHA regulations, but it does not prohibit the use of them. They have 9 points to meet. One is to use them only in the allowable background noise levels. Also, in the first year that you do that, you have to test both ways to establish a new baseline. So, this is an additional restriction. She feels very strongly that the 99 ANSI levels are too stringent, and she would be happy to consider some other proposal.
Mr. Smith asked her to put her comments in terms of the proposals that were sent out. 32 at 500 was proposed at her recommendation.
Ms. McDaniel said that the levels at 125 and 250 should be dropped altogether. 32 at 500 allows the testing of a zero dB threshold and that is why it was added almost anecdotally at the first meeting. The alternative she found, supported by ACHA, takes the ANSI as it exists and add a 5 dB bump to take it to 26. Most can meet this. Washington is finding that most places can meet 30. The SPL testing with insert earphones becomes moot if the OSHA standard suggests that it still must comply with the background levels. This would be a significant change for the providers to meet that and would not provide that much of a benefit.
She added that most quiet rooms are not at 75. When she measured a booth, she found 51 inside and outside. There are no sound treated environments that meet that specification. The masking can be an issue but it doesn't impact the testing results so that it prevents them from identifying hearing loss. Putting in lax levels to use insert earphones does not make sense.
Mr. Nakamura explained that the idea was to set easier-to-achieve levels for insert earphone use as an option.
She asked if you would have a standard outside the OSHA regulation?
(No, it would be a change.)
The confusion is that this is an ANSI standard, not OSHA. She thinks it is not appropriate to allow that kind of background noise level and think that the earphones will compensate for it, and this may encourage poorer testing environments by making that allowance.
Mr. Smith asked if her recommendation would be to go back to the original proposal that came out of the first meeting, 500-8000 levels, with the 500 between 26 and 32, with no alternative levels for insert earphones. (She agreed). Other members?
Dr. Fankhauser said he hasn't seen those comments before. But he has several comments of his own. The new ANSI reflects developments in technology, OSHA standards refer to many ANSI standards, and people who work in evaluating occupational hearing loss have to recognize many different professional standards. What the proposed change does is to permit control over a

testing situation, and that is the issue. You would get results that would serve the best interests of the employee because it provides the most consistent data for the employee and employer. In 1996, insert earphones were actually widely used, but there was an interim reference to them in the preceding ANSI standard. There are two separate standards but they are significantly interrelated and operate as a consistent whole.
What reference basis did Ms. McDaniel use for her measurements?
She replied that she was measuring the octave band levels in the test environments, the actual octave band levels for feasibility, and you can meet the levels for some frequencies, but none reach the 500 hz requirements.
Dr. Fankhauser: could you have met the requirements for insert earphones?
Would not have reached the levels as proposed in some cases.
So, it seems that you are saying that if you can't meet the standard, change the standard to meet it. As for the comment to move the van from the last meeting, it was a simple reference to the inverse square law of distance from noise which would make a 6 dB reduction. Just that it might be possible. For vans, the idea is to make the service better.
Mr. Nakamura asked Ms. Siegel if she had tested her vans, but was told that they do not use vans. They use a biobetty (?) to test the audiometric testing area.
Ms. McDaniel noted that the biobetty would not provide the needed data below 39 dB. Also, using a standard noise level meter does not measure separate frequencies, and is not suitable for testing compliance with background level requirements. Adopting this standard would force people to rely on clinical testing until the majority of service providers retool.
Dr. Fankhauser said that they haven't been meeting the standard as it is currently as it says in a document for the NHCA that said the appropriate level at 500 Hz is 5 db less than the published standard?
Ms. McDaniel said it was for 5 dB more, and it was just a guideline.
Dr. Fankhauser continued that the point is that if the standard were made more stringent in California it change things only in California. The reason for doing is that low freq sound can influence the sound at a higher frequency, and this is why you would not know if you are measuring the same thing each year, and this could be an important issue in some cases. Some populations segments have been shown to have better hearing, for example, black females have better hearing. If you do not account for such things, you miss the point of the testing. The goal is to improve mobile testing.
Mr. Nakamura suggested that Dr. Fankhauser put in lay terms how this masking effect impairs the testing.
Dr. Fankhauser responded that if you have an intense sound level at a frequency below what you are testing, that lower frequency sound level can cause the person's ability to hear to be worsened. For example, a sound at 125 might influence hearing at 500, and a sound at 250 would influence the 2000 hz hearing.
Ms. McDaniel asked to what degree? What benefit do we get? Will there be 15-30 dB across the board or does it only mean an occasional difference of 5 dB? The problem seems to be exaggerated.
Dr. Fankhauser said that this is what it says in the standard. It depends on the level of the sound that is influencing the test, so it is hard to predict.
Ms. McDaniel: if we can measure a level at 500 hz of 32 dB and still measure a zero threshold how much below zero should we test?
Dr. Fankhauser, said it is probably 10 dB off the mark, for an individual case. A company should be concerned with the accuracy.
Ms. McDaniel said the implication is that most testing vans are doing shoddy work with excessive background levels. This is not the reality. Most are very close to the ANSI studies and control the environments better than what someone might do with just a sound level meter.
Dr. Fankhauser said that he is not suggesting that.
Mr. Smith said that he would like to get other opinions...

Dr. Fankhauser proposed that Cal/OSHA adopt the ANSI 96 and 99 standards and create a third standard for mobile testing services.
Mr. Smith asked them to look at Appendix C, for what they are suggesting as a compromise. Would this proposal be suitable for fixed testing? There would be another level for mobile testing with levels for 500-8000.....
Ms. McDaniel said that the fixed testing and insert earphone users would not be able to meet that either. There should not be a separate standard.
Mr. Nakamura suggested that they address that as a subcommittee but Ms. McDaniel said that she was not sure that she and Dr. Fankhauser could reach an agreement because they have been debating the issue for years.
Judy Freyman said that ORC members are amazed that this issue is being explored without a better understanding of what the outcome will be and without some sort of justification.
Mr. Nakamura asked her what sort of justification that entailed.
Ms. Freyman replied that they would want to see that there are 10 or 20 percent of the working population that is being missed and that is why it is needed.
Mr. Nakamura noted that part of the problem is that this is an effect that has not been tested out so there are no numbers as yet.
Ms. McDaniel said that she has talked to the chair of the ANSI committee who thought this might be more appropriate for clinical settings, and there should be another standard for the non-clinical setting. They can't do that until there is more data to show what is more realistic. Maybe this group should work on getting more data. The way that committee operates is that when they get the data that shows them what is realistic, they can evaluate it, but they do not have resources to do the research. The chair thought they would be receptive to that type of data.
Mr. Smith wanted to clarify which clinics that meant, Ms McDaniels said she meant the diagnostic audiology clinics with double walls having 4 inches of sound insulation, not the industrial clinics that are typically used.
Mr. Lubiens said there is data at NIOSH, and NIOSH is supporting dropping 500 Hz. because it is not relevant to hearing loss evaluations. He also believes that the other professionals in this field are not moving forward on this issue so this group should refrain from adopting a change too quickly.
Dr. Fankhauser said NIOSH people have pointed out that the current hearing conservation paradigm has been a failure; working people still lose their hearing. A study in Michigan showed that people in noisy work environments continue to experience significant hearing impairment, and they found that some of those employers had no program. It is not that this is a grass roots concern. It has not been effective, and if the quality of the testing is improved, then on an individual basis, hearing impairment may be picked up, and that is the point of this proposal.
Ms. McDaniel agreed that after 20 years, there is still hearing loss, but in the overall picture, the allowable levels in the testing environment are not the weakness; tightening that up is not the answer to improving hearing conservation programs.
Mr. DuPriest agreed with Ms. McDaniel that if it has been a failure all along, there is an educational problem, and the individual should take responsibility. The responsibility of the individual is missing in this whole approach. There is no way to control individual behavior.
Dr. Fankhauser said the point is that accurate information is needed to inform the individual.
Ms. McDaniel said that what she disagrees with is the idea that the information being produced is not good enough.
Mr. Smith suggested that they review the proposal as a subcommittee for the possibility of making changes at 1000 and above and what should be done for the frequencies below.
Mr. Lubiens asked if the Division is enforcing this especially, and Mr. DuPriest said he wanted to see inspection data.
Mr. Smith said that was fine but there would be no hearing conservation data for construction since that is why we are meeting.

Mr. Lubiens added that after his company had provided testing to the division they received many employer calls about getting a hearing conservation program started. This showed the importance of the Division driving the awareness for the need for hearing protection overall.
Mr. Nakamura noted that the issue before the committee had not been poor compliance with Appendix C, are they suggesting it is a problem?
Ms. McDaniel said that she would work with Charlie on making another proposal.
Mr. Nakamura wanted to make some clarifications before moving to the next part of the agenda. The issue about the overall failure of the hearing conservation approach is that the promulgation of the original standard was not made to protect the hearing of the whole population, but set at 80% of the population.
Dr. Fankhauser said that at 90 dBA, about 30% of the population would experience significant hearing impairment, and at 85, 15% and at 80, 2-3%.
Mr. Nakamura said, so you would see some loss regardless of compliance. He agreed.
Also, Mr. DuPriest raised a good point about education, but that is not something that we can deal with in this setting. The education needs to start at the elementary school level so that people are aware of what can happen from going to loud concerts, shooting a gun, etc. The third point is about the comment that Mr. Lubiens made regarding the NIOSH statement that testing at 500 Hz is not important, and this is discussed in the NIOSH response to the OSHA Advanced Notice of Public Rulemaking (ANPR) that has been provided for the group to review. NIOSH believes that it would be better to ignore 500 and include testing at 8000 Hz.
Ms. McDaniel asked if there were DOSH grants or resources for data collection and Mr. Nakamura said that there probably is no state money anymore, but there might be Federal.
(Break)

Petition 223

Synopsis: the employers in general are opposed to requiring monitoring of noise exposures. The use of the exposure table or other presumption of exposure is generally considered a preferable way to establish exposure. Providing the audiometric testing is not supported by all employer groups; SMACNA is not in favor of the testing; the roofers are very concerned that the testing will impose an unacceptable workers compensation liability on some employers; and the Chamber shares that concern. AGC feels that it might support testing if a suitable recordkeeping mechanism, such as a third party consortium, can be developed. In the absence of several participants, the minimum employment period that would establish an employee's inclusion in the hearing conservation program was not decided. The SCIF representative offered to provide some information about agricultural claims and the number of claims that were triggered by the initial adoption of the standard for general industry at the next meeting, which is tentatively planned for September.

Monitoring and alternatives:
Mr. Nakamura said that the next issue was the monitoring proposal. The proposal that was sent out was based on the idea that employers did not want to have to do monitoring to decide who would need to be in the hearing conservation program. Using this chart is an alternative. It is information that came from the Laborers' response to the OSHA ANPR. Obviously it has nothing for agriculture or the oil drilling operations, and that would have to be determined. In general, employers do not want to have to do monitoring.
Ms. Siegel, for AGC concurred.
Mr. Nakamura asked if she wanted to amplify.
Ms. Siegel said that when in doubt, employers would not have to monitor but would provide hearing tests and training when in doubt or by using a reference table.
Mr. Walker said that the chart does not have time-weighting and does not take into account whether an employee is working five minutes or all day at some given noisy task or place.

Mr. Nakamura agreed, and explained that the underlying assumption is that the exposure time will vary from day to day, and if a person is only exposed a few minutes one day, that person could be exposed 8 hours or more the next. Doing those tasks would make a presumption of exposure.
Ms. McDaniel added that you could not have it both ways, either an employer monitors or assumes that the person is exposed. You have to either consistently monitor to evaluate their exposure.
Mr. Walker said, so if you are exposed for one minute according to the table, you are in the HCP?
Ms. McDaniel said that was how she understood it.
Mr. Smith said that he believed that what Mr. Walker was saying is that the table could have the allowable time of exposure for a given task like the first activity listed.
Mr. Coatsworth added that they have shops and field jobs, so that they could have both exposures. Also, if someone is working in certain kinds of buildings, like echoing air hammers that affect people 30 or 40 feet away.
Mr. Walker said it seems that if all employees are not in the program, working with material, no matter how long the exposure, the employer risks a citation or a claim.
Dr. Fankhauser said that might be so even though the person is a recreational shooter, and that is the point of monitoring. If you don't have the data, you don't make good decisions.
Mr. Walker said the members of SMACNA already voluntarily provide hearing protection and information already, why are they being forced into a program that could add a cost for them in direct and not so obvious ways especially if there may not be enforcement for all employers.
Ms. McDaniel asked Mr. Walker how you would prove that a claim was not justified?
Mr. Walker said that the point is that they are doing everything they can, but he doesn't know if there are claims as she described.
Mr. Milano, a member of Bay Area SMACNA, has been a contractor for 40+ years. He has worked with jackhammers, and air hammers, and always finds out what kind of safety protection the workers need. They also have training and safety meetings. He can't keep track of everyone in the field, but he provides them with what they need. As for workers' comp claims, he does all he can, and it is up to the employee. If it is necessary to have the yearly test, that is not the problem. The problem is that the competition does not have to have that unless they are union employers, and they also will be harder to police.
Mr. Coatsworth said that the problem is that SMACNA is not the whole world.
Mr. Walker suggested that having a voluntary program could be the basis for an exemption from the audiometric testing, and recordkeeping. Employers need a safe harbor.
Ms. McDaniel responded that if there is a hearing loss claim, she doubts that they would have any grounds to fight it.
Mr. Walker answered that a hearing test could cut both ways. If there is a baseline test, and the person does things like shooting or going to rock concerts and shows a loss at the testing, the person could file a claim that would increase the employer liability.
Ms. McDaniel said that the flip side is that it is probably enough to have an annual test, and that would allow them to be told that they have a problem starting, and intercede, and at least inform them. In her experience, it doesn't matter where they work, if they retire and go to a hearing aid dealer, they will get a claim form that can help them pay for it.
Mr. Smith reminded the group that this discussion was about monitoring. It seemed that the exemption of these industries from monitoring would be acceptable.
Mr. Walker said that his group would not sign onto the task list.
Mr. Smith asked if he wanted to have employers exempt from monitoring, and Mr. Walker agreed.
Mr. Johnson said that having an alternative, like a reference chart, is a better alternative to monitoring. Most of their employers are not industrial hygienists, and they would get the most basic sound meter to try to meet the requirement (and still not be in compliance). So, between mandatory monitoring or a mandatory chart, the chart is better.
Ms. Siegel said that this allows for monitoring, but you don't have to.

Mr. Johnson clarified that the key to the regulation is one that they can understand, and if there is reference data that they can go to, that is better, and it may be more enforceable.
Ms. Katten said that in agriculture, there are a lot of different types of equipment and monitoring may be a better way to go since there can be borderline cases like different kinds of equipment on the tractors, etc. So maybe a combination might be more effective for agriculture.
Mr. Nakamura said that we don't have much data on agriculture, and if anyone should have that data, please send it on.
Mr. Michalko asked what type of data, and Mr. Nakamura clarified that it would be exposure data.
Mr. Michalko said he might be able to provide some.
Mr. Coatsworth noted that he has seen people working close to automated machinery that might have an exposure similar to a packing operation.
Ms. Katten agreed.
Mr. Lubiens noted also that currently, a Cal/OSHA inspector could go to a construction site and write a citation for not providing hearing protection if the exposure is over 90.
Mr. Michalko said that last year, the question was raised, and he did an informal survey; their staff has doubled. 14 surveys were done in agriculture and 9 in construction. They have close to 70 people in their loss control unit now so there may be more evaluations forthcoming.
Dr. Fankhauser noted that the chart shows that there is a big difference in some of the heavy equipment; a wide range of noise levels for tractors and other heavy equipment when they are equipped with cabs, and especially insulated cabs.
Mr. Nakamura agreed that there are wide variations in the table and the idea is not to discourage innovations towards the development of engineering controls, but to achieve the goal of finding a practical way to get employers to provide hearing conservation where it is needed.
Dr. Fankhauser asked how an inspector would proceed with enforcing the regulation.
Mr. Nakamura said that the inspector would determine if the employer is doing measurements that show there is no overexposure, or if the employer is relying on the chart but has not provided the hearing conservation requirements, they would be cited.
Mr. DuPriest noted that he could get someone like Dr. Fankhauser to refute the exposure in an appeal.
Mr. Smith said that most of the DOSH cases will require an employer to take measurements as is done now, in order to support a citation.
Mr. DuPriest said that Cal/OSHA would have to hire a lot of people to enforce it.
Mr. Nakamura asked if there was any other proposal or modification to this proposal.
Ms. Siegel wanted to clarify that the current proposal was to not require monitoring and that was confirmed.

<u>Length of employment for coverage</u>
The next part of the agenda was the audiometric testing program and the proposal for covering employees working for 30 days or more.
Mr. Yates asked how this proposal fits with the existing way of implementing the requirement for general industry employers such as in the canning industry that is seasonal.
Mr. Nakamura said that it would not apply to general industry. He is referring to a different part of the process. This approach is to deal with a whole group of employees that may be very mobile, or permanent. He is talking about implementing the process.
Mr. Smith said that this proposal is to offer the employees who work for 30 days a more a test. The other aspect is providing the hearing test within 6 months or a year depending on whether the testing facility is mobile or stationary.
Mr. Yates said his real question is if this will include employers in general industry.
Mr. Nakamura said it would not.
Ms. Katten said that the part about audiometric testing is being included? NIOSH recommends that the tests be done within thirty days of employment anyway and this should be considered.

Mr. Yates said that there were very sound reasons for having that 6 month period. Ms. Katten said she understood that but NIOSH recommends having the testing in a month because when there are high noise exposures, there can be hearing loss within a month.
Ms. Broyles said they have the same concern as Mr. Yates. There is a stable employment definition in many areas of law that kick in at 90 days or more and goes up to 120 days before other laws kick in, NIOSH recommendations are not applicable unless Federal law or regulations are changed. The Chamber is very concerned about over regulating employers beyond what happens in other states, especially for employers with multi-state operations. They feel that 30 days is too restrictive.
There was some discussion as to whether she meant the proposal as it should apply or the concern that it applies beyond that. Ms. Broyles said that there should be the 120 day period that is in Federal regulations. Mr. Smith noted that coverage for the noise standard is currently one day.
Mr. Yates reiterated that for the canning industry, there are good reasons for the existing regulation's applicability. It doesn't make sense to pay for audiometric tests for three people who are filling one job.
Mr. Smith said that is not part of this proposal. At the last meeting, the proposal was for employees who work for 120 days. This 30 days was a compromise.
Mr. Bosley added that was with the proviso that monitoring would be an option. The initial proposal (by petition) was to make construction and agriculture the same as general industry. And it seems that the people should stand by their agreements.
Mr. Walker said that his reading of paragraph 8 it looks like for an employee who is hired for 179 days doesn't need to get a test. So why will a tougher requirement be applied.
Mr. Smith said that the way the standard applies currently in general industry, as soon as an employee is hired, the person is offered a hearing test (if exposed to noise). But the employer does not have to give that test for 6 months or a year, but the arrangements for the test or truck have to be made, and the employee can take the test when the truck is there. This language says that for an employee who works for less than 30 days, the employer doesn't have to make the offer or provide the test but once the employee works for thirty days or more, they are offered the test and given the next scheduled test.
Mr. DuPriest said so the transient employee could get that test 11 times a year?
Ms. Siegel said that you have to make the test available for them while they are there?
Mr. Smith said no, not as it is applied for general industry. They are still given the training and hearing protection, this is a minimum standard. Best practices would be at the day of hire, but that is not how the regulation actually works.
Mr. Johnson said that their association is concerned about the cost impact of workers' compensation, they have employers who are paying dollar for dollar insurance. Unless there can be something in the regulation that will make the employer responsible for the hearing loss only beyond their initial baseline test (not previously existing hearing loss). Mr. Nakamura asked him if he meant a no-fault baseline, and he said that was the idea.
Mr. Smith noted that Cal/OSHA regulations do not apply to workers' comp practices.
Mr. Johnson said that there are many other factors that drive up workers' comp, and the roofers are probably among the highest in California.
Ms. Broyles said that her members share this concern and that hearing loss claims come in commonly during the last 5 years of employment, when an employee expects to leave the job, they request a hearing test to file a claim. The Division should at least explore the possibility that the hearing test will not be used for workers' comp claims.
Mr. Smith said that cost data always helps with this rulemaking process. As you said though, it doesn't seem that regulatory language can apply to workers' comp.
Ms. Broyles said that with AB 1127 the existence of a regulation became usable in a lawsuit, so that door was opened two years ago, and only had to be dealt with in an advisory process until now. So it is not unreasonable to ask the Division to explore the possibility now.
Dr. Fankhauser said that in his experience, hearing loss damage is insidious, and will occur before the person is aware of the loss; the Labor Code recognizes this with a statement that since these

are cumulative damage problems, so it says that a worker knows or should have known, that a problem existed. So in California if you hire a guy and keep him for a year and a day, whatever his hearing is, you will pay for. So if you are employing someone on a noisy job and the person has hearing impairment, you may get a compensable claim. You should seek advice from someone whose counsel you respect. That starts the clock and after a year and a day, you would be in a defensible position to argue that the person knew or should have known because you provided information. This is a double-edged thing that could work for either side but better for the employer to be ready.
Mr. Nakamura asked Mr. Michalko to discuss the workers' comp viewpoint.
Mr. Michalko said he has statistics on hearing loss claims bot the total number and cost and average cost for general industry claims, and could make the information available at our request. For the past seven years, there were about 828, 108 claims and 403 for hearing loss only. 0.06%. total incurred cost, 5.8 billion total and 3.1 million for hearing loss only. The average cost of a claim 13,600, and 10,600 for hearing loss only for both disability and non-disability claims. The highest employment group was for stevedoring not elsewhere classified, and then municipal and state employees, then logging, trucking, and skip two, down to carpentry (8th) and only 21 claims for the last four years. Clerical had a higher number of claims than machine shops. SCIF insures more construction employers than anyone else in the world so the data would appear there if anywhere. There may be a lot of reasons to explain this such as under-reporting, and transient workers. But still, you do not really see a lot of hearing loss claims in general industry either. He doesn't want to minimize the public health importance of the issue, and supports a rational approach to this process, and stands somewhere in the middle of positions here.
Mr. Bosley said that he thought the proposal was somewhat in the middle.
Ms. Siegel said that once the testing begins, there will be more claims.
Mr. Michalko said that this is an underwriting concern also. What they have been doing is to recommend baseline testing at hire so that the employer doesn't buy the claim. He would like to see an exemption for that period of time until the testing.
Mr. Nakamura asked him what kind of exemption he meant, and he said legislative or regulatory exemption them from being able to claim the hearing loss from the first test.
Mr. Smith said that the Division can explore those possibilities, but they are a little out of the usual sphere of rulemaking.
Ms. Siegel said there is control over employees hired after the regulation, but what about all the people who are already working there, what about all that hearing loss.
Ms. McDaniel said that the hearing loss is there whether you test or not, and they could file at any time and an employer would not have any defense. In her experience, the implementation of hearing conservation with testing does not drive the claims over the top. Every industry and company has the same concern but the experience doesn't bear that out.
Ms. Broyles asked what the cost would be for the environment.
Mr. Walker said that there would be an impact that would shape other costs not just for testing but for the working environment as a whole.
Mr. Lubiens said a good ballpark for testing would be 15 dollars for a test.
Ms. Broyles asked if that would apply for all types of industry?
Mr. Nakamura said that the proposal is not going to affect all employers in California, just the construction, agriculture, and oil drilling operations.
Mr. Lubiens said the cost is not the testing, the cost would be for administration of programs, and he has asked employers to tell him what the costs seem to be.
Mr. Smith said that the employers should consider how many employees there are and how many qualify, and then how many would be there for the actual testing. Mr. Milano said that his own business has mostly steady workers of 5 years or more, as with most residential contractors.
Mr. Walker asked how much downtime there is for the test?
Mr. Smith said that it could be combined with some other type of test that would be done on an employee.

Ms. Siegel said that there were times when there are other tests that are done like pre-employment.
Mr. Lubiens said that the test is about 5 to 7 minutes, and if the paperwork is done ahead of time and streamlined, ten to twelve per hour easily.
Mr. Milano said a smaller contractor would pay more per man than another.
Mr. Yates suggested making it clear that this applies only to agriculture, construction, and oil-drilling operations.
Mr. Smith said the proposal will be made more clear.
Mr. Yates added that the test should be done as a baseline each year if an employee returns after an absence.
(Lunch.)
Mr. Bosley wanted to confirm that 30 days was acceptable to AGC, but Mr. DuPriest had not heard that Ms. Siegel. Mr. Nakamura noted that she had mentioned in a phone call that 30 days might be acceptable if there is no monitoring.
Ms. Broyles said she wanted to go back to her members. Mr. Nakamura asked her if she represented smaller contractors, and she said she represented some of that size, as well as agriculture and oil.

Training.
Ms. Broyles asked how the idea (the importance of audiometric testing) would be conveyed by employers; how to stress that idea to employees who do not receive the testing.
Mr. Smith said that it would be to say that the hearing test is important. There are going to be many people who will not qualify by length of employment, but it is important for them to have a test.
Ms. Broyles noted that the excluded employees would probably also not have health care coverage.
Mr. Smith agreed, but the idea was for the employee to use their own health care, or go to some private source, not through an employer sponsored health care program.
Ms. Broyles said that employers could encourage employees to get the testing done by their own health care provider, but the phrase "stress the value of" sounds like an advertisement.
Mr. Smith suggested replacing "stress the value of" with "encourage employees to annually obtain". Ms. Broyles agreed.

Recordkeeping.
Mr. Nakamura said that one of the things that AGC had wanted to propose is to have a consortium for doing the testing and keeping the records. He asked Ms. McDaniel about her knowledge of the Washington program.
Ms. McDaniel said that they pay into it, and get a hearing test, and the data is put into a database, and the record goes back to them. The employee gets a card, and participants pay into the database system to find the employees who are within the system. Claims are paid by Smartpool(?), and this is through the trades.
Mr. Broyles noted that Washington has a state fund that would help cover the cost of the program. Secondly, California has higher barriers for confidentiality and the access to employee information, and thirdly, the cost would be high and biased against the smaller employers who do not use organized labor, and they might end up on a sort of "black list".
Mr. Nakamura said that the proposal is not to adopt the Washington program, but it is an example of the approach.
Ms. McDaniel added that this is one approach that would keep separate employers from having to try to have a worker tested many times a year; they would get it done once a year.
Scott Strawbridge representing union signatory contractors, they have a similar program in Contra Costa county for safety data on training records, but there has not been much success. The concept is fantastic, but there is difficulty in generating interest; only a couple of crafts have

signed on. This should be industry wide, but how to include non-signatory companies while imposing a cost on participants is a problem.
Mr. Smith added that he believed the AGC was not trying to require that concept for everyone, but offer it as an option so participants could band together and not have to bear the costs alone.
Ms. Broyles asked if there is anything stopping them from doing that if they want to?
Mr. Smith said no, it is a clarity note to show they can do that.
Ms. McDaniel added that it also frees them from the 30 day concern.
Mr. Bosley noted that the access to records is easily covered by labor with a release.
Ms. Broyles said that the problem of employer liability for confidentiality is huge. The consortium should not be part of the regulation, better in the P&P, but not in the regulation.
Mr. Walker asked about 3204 and retention of records. The answer was 30 years beyond the last day of employment.
Mr. Smith added that it applies to most records already, and includes accessing exposure records too, and this would be to make that consistent.
Mr. Nakamura said that AGC would be contacted to get a complete proposal about having a consortium, and send that out for review.
Mr. Smith asked Mr. DuPriest if Ms. Stroup had been concerned about having that mentioned in the standard specifically and he said he would have to ask.
Mr. Walker said again that voluntary programs that meet certain parameters should be exempt. The idea is to protect hearing, and if the employer is providing information and hearing protection already, what more is necessary?
Ms. McDaniel asked what guarantee he meant, and he said that it should be protection from the regulation, citations, and liability.
Mr. Smith suggested that he provide some draft language.
Mr. Johnson added that until society in general recognizes the need to protect hearing, this work protection will be difficult. For example someone might go to sporting event where the audience is encouraged to make as much noise as possible to support the home team, and then have a threshold shift on Monday. This regulation can be enforced already by citing employers for not providing and requiring the use of hearing protection.
Mr. DuPriest said that the SCIF report said that there were so few claims that maybe this should be left alone since it is not really a problem. Wouldn't education be the first step?
Ms. McDaniel said that education is always the first step, regardless. But without doing the hearing evaluation you don't know if you are being effective or not. There are people with hearing protection that is not doing the job because they are not wearing them properly, and this cannot be determined without a hearing test. Her concern as an employer would be that she would have no protection from liability, and get hit with the whole claim.
Ms. Broyles noted that Meneer's disease is one that causes hearing loss, and it seems what is missing from the discussion is the natural occurrence of hearing loss in society. Also, her daughter listens to loud music, and she will probably not have perfect hearing. This is a societal issue, and should be taken into consideration: the employer should not have to pay for that.
Mr. Smith said that it might be appropriate to find out what employers in general industry have to say about the other sources of noise since they have been required to provide the hearing conservation programs since the regulation was adopted.
Mr. Coatsworth noted that people who enjoy activities like sports events, shooting, and rock concerts often talk about them, and an employer can note those comments against possible claims.
Mr. DuPriest and Ms. Broyles said that this is not very likely because of privacy rights.
Dr. Fankhauser said that a Scandinavian researcher tracked the hearing of children who had gone to numerous loud musical performances and did not find a significant hearing loss among them. This suggests that if you have a noisy work environment, information could help you if a person made a claim against you but information can cut two ways. You could simply have an employee health history, when possible.

Mr. Lubiens noted that an attorney getting documents from their office told them that he was trying to settle a claim that could go from $100,000 to $40,000. How do you get the documentation? You need to find a way to do that, and this group should be able to find a way.
Lastly, Hearing Conservation.org is the website for the National Hearing Conservation Foundation, Charlie, Ms. McDaniel and he are members. It is a small group but they are doing the most current research. For example one recent presentation was about taking a pill that would counteract the chemistry of whatever happens in the environment of excessive noise. This website has a lot of resources, and links to other sources.
Mr. Nakamura asked if the NIOSH recommendation to use 8000hz as a test frequency would help distinguish the cause of hearing loss but was told that it only indicates if it is noise-induced hearing loss (NIHL) or loss due to a disease. Dropping 500 would be much more significant.
Wrapping up:
The audiometric testing people will meet as a subcommitee and get back to us at the next meeting, which might be in September. And the tentative location will be in Oakland.
Mr. Nakamura said he would reread all the proposals before sending out updated versions.
Mr. Walker asked Ms. McDaniel about costs involved with testing.
Mr. Nakamura said the issues remain open about insert earphones and the 30 day period since all comments on the thirty day issue may not have been presented.